



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Noslot Cleaning Services, Inc.

File: B-251264

Date: March 18, 1993

David Schneier, Esq., for the protester.
Stephen T. Cuzzino, Esq., Paul M. Fisher, Esq., and Diane D. Hayden, Esq., Department of the Navy, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee failed to meet solicitation requirement that offeror demonstrate that custodial services performed under its prior contracts were similar in size and scope to the custodial services under the current solicitation--and thus should not have received the award--is denied where record indicates that agency had a reasonable basis for finding that awardee's experience involved services similar in size and scope to those under the current requirement.

DECISION

Noslot Cleaning Services, Inc. protests the award of a contract to Jewell Industries Inc. under request for proposals (RFP) No. N62477-92-D-0013, issued by the Department of the Navy for custodial services as a competitive small, disadvantaged business set-aside under Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. I 1989). Noslot primarily contends that Jewell lacked the experience required by the RFP and that the agency's affirmative responsibility determination of Jewell was improper.

We deny the protest in part and dismiss it in part.

The RFP, as amended, solicited proposals to obtain custodial services at (1) the Annapolis Detachment in Annapolis, Maryland, (2) the Carderock Division in Bethesda, Maryland, and (3) the ART-91 ocean going tug in Annapolis, under a fixed-price, indefinite quantity contract for a base year and 4 option years. The contractor was to furnish all labor, supplies, supervision, tools, materials, equipment, and transportation necessary to meet the Navy's requirements. The services to be provided under the contract included cleaning and maintaining the halls,

restrooms, offices, lobbies, elevators, eating areas, and stairways. Offerors were required to submit unit pricing for the base year for both fixed-price and indefinite quantity line items of work.

The RFP provided that award would be made to the responsible firm whose offer, conforming to the solicitation, was determined most advantageous to the government, cost and other factors considered. The RFP required offerors to submit technical and cost proposals and stated that price and technical factors were of equal importance. Evaluation of the technical proposals would be based on (in descending order of importance) management capability and technical capability. Under management capability, the first subfactor was described as follows:

"A.1. EXPERIENCE AND PERFORMANCE

This factor addresses the experience of the [o]fferor relevant to the requirements of the RFP. References listed [by the offeror] will provide information concerning ability to conform to specifications, quality workmanship, adherence to schedules, reputation for reasonable and cooperative behavior and commitment to customer satisfaction. . . . Experience will also be based on the offeror's demonstrated past performance in similar efforts such as providing custodial services for [g]overnment agencies or private companies having facilities comparable to those required to be serviced at the Annapolis and Carderock Laboratory."

The Navy received 10 proposals by the March 5, 1992 closing date; seven of the proposals, including Noslot's and Jewell's (the only ones relevant here), were included in the competitive range. The proposals were evaluated by the technical evaluation team (TET) for technical merit and by the price evaluation team (PET) for cost. Following technical and cost discussions with the offerors, the source selection authority (SSA) requested and received best and final offers (BAFO). After reviewing the evaluation results, the SSA noted that although the BAFOs of Jewell and Noslot received the same technical rating of exceptional, Noslot's proposed cost was \$1,457,413 (for the basic year), while Jewell's was \$1,325,131. The SSA considered Jewell's proposed cost reasonable and realistic, and recommended that award be made to the firm on the basis that its proposal was the most advantageous to the government. Since this procurement was conducted as a set-aside under the 8(a) program, this selection was forwarded to the Small Business Administration, which determined that Jewell was eligible to receive award. The Navy thus awarded the contract to Jewell. This protest followed.

Noslot principally argues that the custodial services performed by Jewell under the prior contracts listed in its proposal were not similar in size and scope to the services under the RFP here, and that Jewell's experience (under the experience and performance subfactor of the management capability factor) therefore was inadequate to support the award decision. Noslot notes that four of Jewell's five prior contracts with federal agencies and commercial companies were smaller in dollar amount and total number of buildings than the current contract, and that the agency never determined what percentage of the work Jewell previously performed actually was relevant to the work here. Noslot concludes that Jewell should not have received the award since it failed to demonstrate adequate experience under the RFP's experience and performance subfactor.

The evaluation of technical proposals is primarily within the discretion of the contracting agency, which is responsible for defining its needs and the best method of accommodating them, and must bear the consequences of a defective evaluation. See MAR Inc., B-242465, May 6, 1991, 91-1 CPD ¶ 437; we will not engage in an independent evaluation of technical proposals, but will examine the agency's evaluation only to ensure that it had a reasonable basis and was consistent with the stated evaluation criteria. Id.

We find that the evaluation of Jewell's experience was reasonable. While Noslot is correct that not all of the listed contracts were similar in all respects to the requirement under this RFP, taken as a whole the contracts showed Jewell in fact had experience with the different elements of the requirement here. Jewell's proposal listed three specific government contracts and two commercial contracts that the firm had performed, and described the types of custodial services, the duration, and the total dollar value for each contract. The list indicated that the firm had performed janitorial services, including cleaning halls, restrooms, offices, lobbies, elevators, cafeterias, and stairways, as required under the current contract. Further, all of the listed contracts were several years in length, two of the most recent contracts with federal agencies for custodial services were for amounts in excess of \$1 million dollars, and one of these contracts involved performing custodial services for 100 buildings. All of these factors were viewed by the Navy as showing that Jewell had experience performing "similar efforts," as required under the experience and performance subfactor description. In addition, the Navy was specifically informed by the references listed in Jewell's proposal that the services Jewell performed under its previous government contracts, in which the firm's performance was considered exceptional,

were similar in size and scope to those under the current requirement.


We do not agree that the agency was required to find Jewell's experience insufficient on the basis that only one of the firm's five listed contracts for custodial services was similar in size to the current requirement, since the solicitation did not define similarity in terms of a specified number of buildings or dollar amount. Similarly, while the agency did not specifically determine what percentage of Jewell's custodial work was relevant to the requirement here, as discussed above, it did determine that the firm had experience performing the same type of work covered by this requirement; again, the RFP required nothing more. We conclude that the Navy reasonably evaluated Jewell's experience.

Noslot also argues that there is no evidence in the record indicating that the agency considered alleged negative financial information about Jewell or, indeed, even made an affirmative determination of Jewell's responsibility, as required by regulation.¹ However, in awarding Jewell the contract, the Navy necessarily determined that the firm was a responsible prospective contractor; no more formal determination was required. See Lago Sys., Inc., B-243529, July 31, 1991, 91-2 CPD ¶ 107. Our Office will not review a protest against an affirmative determination of responsibility, which is largely a question of business judgment, absent a showing of possible fraud, bad faith, or misapplication of definitive responsibility criteria on the part of contracting officials. 4 C.F.R. § 21.3(m) (5) (1992); see Little Susitna, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6. Definitive criteria are not in issue, and

¹The protester actually argues that the Navy should have rejected Jewell's proposal as "nonresponsive" due to the alleged existence of this negative financial information (e.g., tax liens) against Jewell. However, responsiveness is a concept related to sealed bidding, not negotiated procurements. The awardee's financial condition, which was not a factor under the evaluation, relates to the firm's responsibility. See Gardy McGrath Int'l, Inc., B-231913, Sept. 29, 1988, 88-2 CPD ¶ 323, aff'd on recon., B-231913.2, Dec. 15, 1988, 88-2 CPD ¶ 595.

Noslot does not allege fraud or bad faith on the part of agency officials. Thus, this issue is not for our consideration.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel